

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of the Petition of the City of
Pine River for Annexation of
Unincorporated Property in the Township
of Wilson pursuant to Minnesota Statutes,
Section 414.031 (MBA File No. A-7593)

**ORDER ON MOTION FOR
SUMMARY DISPOSITION**

This matter comes before Administrative Law Judge Raymond R. Krause on the motion for summary disposition of Wilson Township.¹ Wilson Township filed its Motion on August 29, 2008. Pine River filed a brief response on September 2, 2008. Pine River filed its full response on September 15, 2008. Oral argument on the motion was heard by telephone conference at 9:00 a.m. on September 17, 2008. The motion record closed at the conclusion of oral argument.

Joseph A. Nilan, Gregerson, Rosow, Johnson & Nilan, Attorneys at Law, 650 Third Ave S., Suite 1600, Minneapolis, MN 55402, appeared on behalf of Wilson Township ("Wilson" or "the Township"). Christopher M. Hood, Flaherty & Hood, P.A., 525 Park Street, Suite 470, St. Paul, MN 55103, appeared on behalf of the City of Pine River ("Pine River" or "the City").

ORDER

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum:

IT IS ORDERED that the Township's Motion for Summary Disposition is **DENIED**.

Dated: September 22, 2008.

s/Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

¹ The motion was styled as a "Motion for Summary Judgment" which is the equivalent to summary disposition under the rules of the Office of Administrative Hearings. See Minn. R. 1400.5500(K). The Administrative Law Judge has captioned this order in keeping with the normal nomenclature of this sort of proceeding before OAH.

MEMORANDUM

Factual Background

On September 11, 2007, Pine River filed a petition with the Municipal Boundary Adjustment Unit ("MBA") seeking the annexation of approximately 1,682 acres of unincorporated property ("the Subject Property") located in Wilson Township. The Subject area has a population of 284.² The Township objected to the annexation.

Wilson has sought extensive discovery to determine the justification for Pine River's proposed annexation. In addition, Wilson has requested discovery of what benefits are proposed to be rendered to the Subject Property. Pine River has not provided documentation of its proposals in response to these discovery requests. The City has described its proposals as plans, but absent the information filed for this Motion, those plans have not been reduced to writing.

The Township introduced minutes of the proceedings of the Pine River City Council to demonstrate that Pine River does not plan on rendering any meaningful benefits to the Subject Area. Annexation of the Subject Area is motivated, the Township contends, by Pine River's desire to increase its available tax levy, at the expense of the Township. The Township estimated the tax revenue increase arising from the annexation to be \$116,688.³

Pine River responded by identifying the following as services that are planned to be provided upon annexation of the Subject Area:

- a. general governmental/administrative services for which the City has hired an Assistant City Clerk;
- b. police patrol and protection, for which the City has budgeted for an additional full-time police officer;
- c. fire suppression services to the Subject Area;
- d. maintenance of roads and infrastructure in the Subject Area by the City's Public Works department, for which an additional Public Works employee was hired;
- e. extending sanitary sewer and water supply to the Subject Area within five years after the annexation; and,

² Township Factual Information sheet filed January 25, 2008.

³ Township Memorandum, at 2-4, 8.

- f. all other City amenities currently available to City residents, including parks and recreation facilities and the City Library.⁴

The City estimated that the foregoing services would convey benefits amounting to \$157,295 annually to the Subject Area, itemized as follows:

- a. general governmental/administrative services, \$28,652 (the City's estimate of value of an Assistant City Clerk);
- b. police patrol and protection, general government, public works, and parks and recreation, \$88,848 (for which the City has budgeted for an additional full-time police officer);
- c. fire suppression services to the Subject Area, \$8,769 (calculated by a comparison of the existing contracted service and allocated between the tax capacity of Township and the Subject Area); and,
- d. maintenance of roads and infrastructure, \$31,026 (the City's estimate of value of a Public Works employee).⁵

As part of Pine River's response to the Township's Motion, the City proposed to create a rural service taxing district and an urban service taxing district. The City proposed to phase-in the tax revenues for the urban service taxing district in the Subject Area by setting the rate at 25 percent of the standard City property tax capacity rate. The rate would increase by 25 percent annually until the full City rate is achieved in the fourth year.⁶

The City determined the revenues to be generated under its proposed tax plan to amount to \$128,586 in the year 2010.⁷ No tax revenue figures were provided for the years 2011 through 2013 (when the urban service taxing district would reach 100% of the existing City tax capacity rate).

Legal Standard for Summary Disposition

Summary disposition is the administrative equivalent to summary judgment.⁸ Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.⁹ A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case.¹⁰ The Office of Administrative Hearings has generally followed the summary judgment

⁴ Affidavit of Jim Sabas, at 2-4.

⁵ Affidavit of Joe Rigdon, at 2-4

⁶ Affidavit of Joe Rigdon, at 2-3.

⁷ *Id.* at 2-4

⁸ Minn. R. 1400.5500(K) (2002).

⁹ Minn. R. Civ. P. 56.03 and Minn. R. 1400.5500(K) (2002).

¹⁰ *Highland Chateau v. Minnesota Dept. of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984), *rev. denied* (Minn. Sup. Ct. February 6, 1985).

standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.¹¹

The moving party must demonstrate that no genuine issues of material fact exist.¹² If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.¹³ It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.¹⁴ When considering a motion for summary judgment, the Judge must view the facts in the light most favorable to the non-moving party.¹⁵ All doubts and factual inferences must be resolved against the moving party.¹⁶ If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.¹⁷

Application of Summary Disposition

The City argues that summary disposition in an annexation proceeding under Minn. Stat. § 414.031 is contrary to law. The City contends that the statutory scheme requires a hearing and that disposition by motion conflicts with that statutory requirement. The Township pointed out that nowhere in the statute is the option for disposition by motion expressly forbidden. Where appropriate, judicial economy allows for resolution of matters without a formal hearing.¹⁸ Among the various reasons for such resolution are those situations where no genuine issue of material fact remains regarding a dispositive issue. The City's position is not supported by the statutory language and would lead to absurd results.¹⁹

Analysis

Annexation of property by a municipality is governed by Minn. Stat. § 414.031. Included in that statute is a provision that states: "(d) The director shall deny the annexation on finding that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area."²⁰ The Township maintains that there are no genuine issues of material fact regarding the increase in revenue to the City and the lack of benefits to be conferred to the Subject Area.

¹¹ Minn. R. 1400.6600.

¹² *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

¹³ *Highland Chateau*, 356 N.W.2d at 808.

¹⁴ Minn. R. Civ. P. 56.05.

¹⁵ *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

¹⁶ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

¹⁷ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

¹⁸ See, e.g. *ITMO the Orderly Annexation Agreement between the City of Waite Park and the Town of St. Joseph Pursuant to Minnesota Statutes 414* (OA-775-2), OAH Docket No. 2-0330-16700-BA (Order issued August 3, 2006) (<http://www.oah.state.mn.us/aljBase/033016700.Order.htm>). See also Minn. Stat. § 414.12, subd. 1(b)(1).

¹⁹ The City also argued that the Township's motion lacked required notices. The City has shown no prejudice from this procedural error.

²⁰ Minn. Stat. § 414.031, subd. 4(d).

Pine River relied upon the information provided by the City's Mayor, Jim Sabas, and Joe Rigdon, C.P.A., to support its contention that the benefits to the Subject Area bear a reasonable relationship to the tax revenue to be gained by the annexing municipality. Mayor Sabas described the proposed phase-in of property tax rates for the Subject Area.²¹ The City's expert witness calculated the resulting revenue under that phase-in as \$128,586 in 2010 and he maintained that "the City will confer municipal services in an estimated annual value of \$157,295, beginning in 2010, or 122.3% of estimated revenues generated."²²

The Township raised valid questions regarding the information underlying the evidence presented by the City. The "estimated annual value" appears to be simply the budget items taken from the City's proposed budget. There is nothing showing that the application of these budget items is appropriately allocated entirely to the Subject Area. For example, the item for an Assistant City Clerk as claimed by the City would require that the entire workload for that position come from the addition of 284 persons to a municipality with a population of nearly 1,000.

There is no evidence in the record of this motion that the addition of the Subject Area's population would trigger sufficient work to require the City to incur the cost of another Assistant City Clerk. There is no evidence of how much of the benefit of having a third clerk can reasonably be attributed to work required by the addition of the subject area versus the demand for a third clerk by the existing municipal population.²³ That is an analysis that has not been offered in this record. Under such an analysis, the benefits conferred on the Subject Area would likely not consist of the full cost of the position, but some lesser amount, arrived at by the use of some reasonable formula. The same analysis would apply to all the claimed benefits.

While the foregoing is a reasonable question, the procedural posture of this matter precludes the asking of that question. On a motion for summary disposition, the ALJ must take the facts in the light most favorable to the nonmoving party, in this case, the City. This is true for all of the asserted benefits to the Subject Area. Since the City has offered an expert witness opinion that the entirety of the budget increases for the City will go to the benefit of the Subject Area, the City has demonstrated that there are genuine issues of material fact regarding the amount of benefits being afforded to the Subject Area and the relationship of those benefits actually conferred to the revenues obtained.²⁴ Those issues will be tested at the hearing in this matter.

²¹ Affidavit of Jim Sabas, at 2-4.

²² Affidavit of Joe Rigdon, at 4.

²³ The Township also argued that the position filled was merely filling an existing vacant position. That is clearly an issue for hearing, not summary disposition.

²⁴ The ALJ also notes that there does not appear to be a particular ratio of benefits to revenue upon which to determine, as a matter of law, that the ratio is unreasonable. This is a further basis for denying the Township's motion for summary disposition, since what constitutes a reasonable relationship between benefits and revenue is a genuine issue of material fact.

Conclusion

Summary disposition can only be ordered where a party demonstrates that there are no genuine issues of fact that remain for hearing and that a party is entitled to a ruling in that party's favor as a matter of law. Taking the facts in a light most favorable to the City, genuine issues remain for hearing. For this reason, the Township's motion for summary disposition is DENIED.

R. R. K.

cc: Christine Scotillo